IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTIION

Writ Petition No.8619 of 2007

1. Mrs.Prabhavanti Mulji
Shah and others ..Petitioners

vs.

1. Sumer Builders Pvt.Ltd.
and another ..Respondents

Shri K.S.Jain i/b M/s Niranjan and co. for petitioners.

Shri Vaibhav Sugdare i/b M/s Yasmin Bharucha and Co. for respondent no.1

CORAM: S.C.DHARMADHIKARI J.
28th NOVEMBER, 2007

P.C.

1. This writ petition is directed against the order allowing the notice of motion. Notice of Motion before the Trial Court contained the following prayer.

> "(a) Pending the hearing and final disposal of the suit, this Hon'ble Court may by an order strikeout the amendment inthe prayers (a), (b), (c) and (d) of the plaint and prayers (a) and (b) to Notice of Motion No.4901 of 2005 carried out by the plaintiffs beyond the order dated 24.4.2006 passed in Chamber Summons

No.253 of 2006."

2. The learned Judge was of the opinion that the Court granted amendment by order dated 24th April, 2006 passed in Chamber Summons No.253 of 2006 but the amendments were not carried out. However, the order under challenge itself records that after the amendments were carried out it was orally submitted that consequential amendments have remained to be incorporated in the plaint. The application discloses that the amendments were allowed by the Court but Notice of Motion was taken out by the original defendant no.1 on the ground that the present petitioner/plaintiff has practiced fraud on the Court and obtained the order incorporating something in the pleadings which was never allowed by the Court. Reply and rejoinder have been filed and in my view, with respect, precious judicial time is wasted by the Court below in considering this request when the suit is pending. To my mind, whatever amendments have been carried out pursuant to the orders of the Court do not conclude the merits of the controversy. All pleas of both sides including that of the first defendant that while carrying out amendments a fraud is perpetrated on the

Court so also on other side, are open for being considered and the Court while passing final orders in the suit shall also look into these matters and deal with them in accordance with law. Petition is allowed. Impugned order is set aside. No opinion is expressed on the merits of the amendments or the controversy in the suit.

(S.C.DHARMADHIKARI J.)